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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 627.

IN THE MATTER

of

The Application of NEW YORK COUNTY LAWYERS ASSOCIATION to punish for contempt and to enjoin the unlawful practice of the law by LORENZO J. ROEL.

LORENZO J. ROEL,

Appellant,

NEW YORK COUNTY LAWYERS ASSOCIATION,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

MOTION TO DISMISS AND BRIEF FOR APPELLEE.

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ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

MOTION TO DISMISS AND BRIEF FOR APPELLEE.

Statement.

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves to dismiss the appeal of the appellant upon the following grounds: (1) that the appeal does not present a substantial federal question; (2) that the determination of the State Court of Appeals rests on an adequate non-federal basis; and (3) that appeal to this Court does not lie under 28 U. S. C. Sec. 1257 (2).

This appeal is taken pursuant to Title 28 U. S. C. Sec. 2157 (2). The notice of Appeal was filed August 12, 1957 (Jurisdictional Statement, pp. 2, 3). Review is sought of an order of the Court of Appeals of the State of New York, dated July 3, 1957 (App. B, Jurisdictional Statement), affirming the order of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, made March 26, 1957, (R., pp. 95-96), which, in turn, unanimously affirmed the order made by the Special Term of the Supreme Court of the State of New York, County of New York, on November 5, 1956, adjudging appellant in contempt, pursuant to Section 750B of the Judiciary Law of New York, for unlawfully practicing law in the State of New York, and enjoining him from continuing to practice law in that State (R., pp. 3-7).

The Jurisdictional Statement was served on November 26, 1957.

Nature of Proceeding and Decree.

The proceeding was instituted at the Special Term of the New York Supreme Court (Jurisdictional Statement, p. 2).

The application was granted, and an order was entered on November 5, 1956 which adjudged appellant in contempt (R., pp. 5-6), and enjoined him from continuing his practice of law (R., pp. 6-7) excepting from its provisions any legal opinions, advice and services rendered to a member of the New York bar (R., p. 7, f. 19). The opinion of the Court is reported in 4 Misc. (2) 728, 156 N. Y. Supp. (2) 651.

This order was affirmed by the Appellate Division of the Supreme Court of New York (3 App. Div. (2) 742, 160 N. Y. S. (2) 982), and by the Court of Appeals of the State of New York (3 N. Y. (2) 224, 165 N. Y. Supp. (2) 31; App. A, Jurisdictional Statement).

Constitutional Issue Presented.

The point of appellant's attack on the constitutionality of Section 270 of the New York Penal Law is that a license to practice law in New York requires (1) American citizenship, and (2) knowledge of New York law, and hence the construction placed upon Section 270 of the Penal Law excludes appellant from the practice of foreign law because he is an alien and does not know New York law (Jurisdictional Statement, p. 5).

From this it will be seen no substantial federal constitutional question arises, because it has been frequently held (and is admitted in appellant's statement) that a license to practice law may be restricted to citizens of good character who pass appropriate examinations.

The actual argument of appellant must be that he should be allowed to practice law, though unlicensed. He is clearly wrong.

Statement of the Case.

The basic facts, on which the decision below was rendered, are undisputed. A summary thereof appears in the opinion of the Court of Appeals (App. A, Jurisdictional Statement, pp. 27-28), which differs slightly from the conclusory statements of appellant (Jurisdictional Statement, pp. 5, 6). For the purpose of this motion, the salient facts are that appellant, a Mexican lawyer, and neither a citizen nor lawyer of New York, was engaged in the business of giving legal advice and rendering legal services, in respect of Mexican law, directly to the lay public of New York.

Appellant does not appear anywhere in his Jurisdictional Statement to challenge the proposition that his

activities constitute the practice of law in New York as held by the Court of Appeals (Jurisdictional Statement, App. A, p. 29).

The Court of Appeals holds that:

(1) The practice of foreign law is the practice of law in New York under Section 270 of the Penal Law (Jurisdictional Statement, pp. 30, 31).

(2) Appellant's competence in the field of foreign law is immaterial; a specialized area of competence does not entitle a layman to engage in the business of giving legal advice based on his knowledge of the subject; a foreign lawyer is in a similar position; he is a specialist in a particular field of law, and a layman in New York (3 N. Y. (2) 224, 231; Jurisdictional Statement, pp. 31, 32).

(3) The basis of the requirements for licensing attorneys is the protection of the public when they seek legal advice; this protection must be deemed to embrace whatever kind of law or legal rights are involved when advice is sought. It is utterly inadequate protection to a New York resident to allow a Mexican lawyer to arrange the institution of divorce proceedings in a Mexican court, without allowing him to tell his client that the divorce might be invalid (*Querze* v. *Querze,* 290 N. Y. 13), or that it might adversely affect estate or other property rights or status in New York (*Matter of Rothscheck,* 300 N. Y. 346). Nor is there any difference between the right of a Mexican lawyer to act and advise the public in divorce matters and the right of foreign lawyers generally to act and advise with respect to foreign law. New York lawyers, retained in a matter involving foreign law, are responsible for the proper conduct of the matter, and may not claim that they are not required to know the law of a foreign state (*Degan* v. *Steinbrink,* 202 App. Div. 477, aff'd 236 N. Y. 669); they

may be regulated by the courts (*Matter of Gomez-Franco,* 274 App. Div. 56; *Matter of Anonymous,* 274 App. Div. 89; See *Caldwell* v. *Caldwell,* 298 N. Y. 146, 147), and dealt with when they engage in unethical practices, and they may not plead, in defense, that the matter related to foreign law and therefore they are immune from disciplinary action (3 N. Y. (2) 224, 231, 232; Jurisdictional Statement, pp. 32, 33). A foreign law specialist is not subject to discipline; he need not be a lawyer of any jurisdiction; he may be without character, and his activities may not be regulated (3 N. Y. (2) 224, 232; Jurisdictional Statement, p. 33).

(4) There is no substance to appellant's claim that the application to him of Section 270 of the Penal Law deprives him of liberty and property without due process of law. The requirements established for admission to the bar are enacted for the protection of the public (*People* v. *Alfani,* 227 N. Y. 334, 339). The public is as liable to injury when an unlicensed person gives advice as to legal rights under foreign law as it is when advice is given as to domestic law. Separate examinations for various specialties in the law are not required. It is not unreasonable, therefore, to require a person wishing to engage in the practice of foreign law to be admitted to the New York bar and be subject to the same rules as every other member of the bar (3 N. Y. (2) 224, 233, Jurisdictional Statement, pp. 33, 34).

(5) The appeal taken as of right was dismissed on the ground that no substantial constitutional question was involved; on the appeal taken by leave of the Court, the order was affirmed.

Summary of Appellee's Argument.

POINT I.

The argument is the same as that set forth in the opinion of the Court of Appeals. Appellant's activities constitute the practice of law. He is enjoined from continuing them, not because he is an alien or because he does not know New York law, but because he has not been duly admitted to the practice of law in New York.

POINT II.

The decision below rests on a sound non-federal basis. Appellant is engaged in the practice of law within the meaning and intent of Section 270 of the Penal Law. The requirements for admission to practice law are based upon the protection of the public. The public is entitled to the same protection when it seeks advice on foreign law as it gets when it seeks advice on domestic law. It is not protected when an advisor of foreign law is unable to relate the problem presented to the effect or status of the New York resident under local law. The practitioner of foreign law, on appellant's thesis, need not be a foreign lawyer, nor need he have any qualification of education, character or status. He is unregulated and uncontrolled. That is no protection to the public.

POINT III.

Appellant may not take an appeal under Title 28 U. S. C. Sec. 1257 (2). His remedy is by writ of certiorari under Title 28 U. S. C. Sec. 1257 (3), because his claim, if any, would rest upon an assertion of a right, privilege and immunity under the Constitution of the United States.

If the Court should consider the appeal as if it were an application for certiorari, it should be denied for the same reasons presented on this application to dismiss.

POINT I.

No substantial Federal question is presented.

A. The Court of Appeals of the State of New York has determined that the practice of foreign law is the practice of law in New York within the meaning and intent of Section 270 of the New York Penal Law (3 N. Y. (2) 224, 228-230). The Supreme Court will accept and be bound by such construction. (*Aero Transit Co.* v. *Commissioners*, 332 U. S. 495, 499; *Bob-lo Excursion Co.* v. *Michigan*, 333 U. S. 28, 33; *Barsky* v. *Regents*, 347 U. S. 442, 448.) Appellant is not a duly licensed lawyer in New York and therefore he violates said section of the Penal Law by engaging in the practice of foreign law.

"It is perfectly clear", says the New York Court of Appeals (3 N. Y. (2) 224, 228) "that the activities engaged in by appellant constitute the practice of law (*People* v. *Alfani*, 227 N. Y. 334, 337, 339; *Matter of N. Y. County Lawyers Assn.* (Bercu), 273 App. Div. 524, affd. 299 N. Y. 728)." It cites with approval *Matter of Pace*, 170 App. Div. 818 and *Matter of N. Y. County Lawyers Assn.* (Anon.), 207 Misc. 698.

It is the law of New York (*New York County Lawyers Assn.* (Bercu), 273 App. Div. 524, 527, affd. 299 N. Y. 728) that:

> "To practice *law in any manner*, unless one be duly and regularly licensed and admitted to practice law, is a violation of Section 270 of the Penal Law • • •. People *v.* Alfani, 277 N. Y. 334". (Italics by Court).

B. A license may properly be required for the practice of law.

Schware v. *Board of Bar Examiners*, 353 U. S. 232, 239.

Appellant's assertion of his alleged right to engage in the practice of foreign law is an assertion of a right to engage in an unlawful occupation. It stands, as was said by Mr. Justice Bradley, in *Bartemeyer* v. *Iowa* (18 Wall (U. S.) 129, 137):

> "* * * upon the same platform as does a claim of right to disregard laws and to usurp public franchises."

C. The appellant may not question the requirements of New York for admission to the bar, because he has not applied for such admission.

D. (1) Appellant has not been excluded from the practice of foreign law because of alienage, but because it constitutes the practice of law, and he is not a lawyer admitted to practice in New York.

(2) In any event an alien may be excluded from the practice of law, and such exclusion does not violate the Fourteenth Amendment.

The principle of the decision of the New York Court of Appeals is that no person may practice law in New York unless he is duly admitted to the New York bar. It applies to all laymen without distinction between citizenship and alienage.

The opinion of the Court of Appeals notes that the Court is dealing with the "conduct of a person who renders legal services to the public as a business."

The effect of the decision is to bar every person, citizen and alien, from engaging in the practice of foreign law, if he is not a duly admitted attorney.

The principle expressed is not applied to appellant because he is an alien, but because he is not a member of the New York bar.

It is settled law that the State under its police power, controls and regulates the practice of law, and may create standards for admission to the bar.

Bradwell v. *Illinois*, 16 Wall (U. S.) 130, 139;
In re Lockwood, 154 U. S. 116, 118;
In re Summers, 325 U. S. 561;
Schware v. *Board of Bar Examiners*, 353 U. S. 232;
Koenigsberg v. *State Bar of California*, 353 U. S. 252.

In no State of the United States may an alien practice law, and the states are uniform in their denial of admission of aliens to the bar.

See:

Matter of O'Neill, 90 N. Y. 584;
Large v. *State Bar of Cal.*, 218, 334, 23 P. (2) 288;
In re Ashford, 4 Hawaii 614;
Ex parte Thompson, 10 N. C. (Hawks) 355;
In re Yamashita, 30 Wash. 234. 70 Pac. 482;
In re Admission to the Bar, 61 Neb. 58, 84 N. W. 611;
In re Maggio, 27 A. D. 129, 51 N. Y. Supp. 1055;
In re Hong Yen Chang, 84 Cal. 163, 24 P. 156;
State v. *Rossborough*, 152 La. 946, 94 So. 858.

The foreign lawyer owes his allegiance to a foreign power. If he were permitted to give advice as to foreign law, there is the danger that he would be guided by his

foreign allegiance rather than his duty to his New York client.

Rule I of the New York Rules of Civil Practice provides that no person shall be admitted to practice law unless he furnish satisfactory proof to the effect:

(1) That he believes in the form of government of the United States and is loyal to such government, and

(2) That he is a citizen of the United States.

Section 466 Judiciary Law of New York, and 270 of the Penal Law, require that before a person be admitted, he shall take the Constitutional Oath of Office. The Constitutional Oath requires allegiance to, and support of, the Constitution of the United States, and of the State (Art. 13 Sec. 1, New York State Constitution). An alien cannot take such an oath. This Court has sustained the right of a State to refuse admission to its bar any person who cannot, or will not take such an oath to support the State Constitution (In re Summers, 325 U. S. 561).

A lawyer becomes an "officer of the court and like the Court itself, an instrument or agency to advance the ends of justice" (People ex rel *Karlin* v. *Culkin*, 248 N. Y. 465, 470, 471).

It is, therefore, a proper and reasonable exercise of the police power of the State, for the protection of the New York public, to restrict admission to the bar and the right to practice law, including foreign law, to those only who owe allegiance to, and will support, the Constitution of the United States and of the State, and who believe in our form of government. These are essential attributes to "officers of the court" who are part of our administration of justice. An alien cannot qualify. He may be one who owes his allegiance and support to a foreign country whose policy it may be to overthrow our government by force and vio-

lence. New York will not admit to the bar a citizen who believes in the resort to force to overthrow the government (*App. of Cassidy,* 268 App. Div. 282, affd. 296 N. Y. 926).

Appellant concedes that citizenship is a proper requirement for admission to the bar (Jurisdictional Statement, pp. 11-16). Indeed he states that membership in the Mexican Bar is restricted to citizens, and if he were to become an American citizen he would cease to be a Mexican lawyer (Jurisdictional Statement, p. 6). The conclusion to be drawn is that if appellant lost his Mexican citizenship he would no longer be able to practice law in Mexico. Since the practice of foreign law is the practice of law in New York, and appellant is not a citizen of the United States, his exclusion in New York is on the same basis as would be his exclusion in Mexico, if he were not a Mexican citizen. It ill behooves him to ask for better consideration in New York than he would receive in his own country.

Section 270 of the Penal Law is aimed at the evil of the practice of law by laymen, whether they are citizens or aliens. The court does not select aliens, as a class, as the source of evil.

A layman who makes a business of giving legal advice on foreign law, is not subject to the supervision and control of the courts and to its disciplinary action; such a layman need not even be a lawyer of any foreign jurisdiction; he may even be without good character; he may not or cannot relate his advice on foreign law to the whole problem presented, and thus his advice gives utterly inadequate protection (3 N. Y. (2) at p. 232). Thus evil and damage may arise. The public is entitled to the same protection in respect of legal advice on foreign law or domestic law. Therefore only lawyers who are licensed to practice in New York who have met all the required standards, including character standards, and are subject to the rules gov-

erning the admitted lawyer are permitted to make a business of giving advice on foreign law (3 N. Y. (2) at 233).

It is perfectly obvious that in its application of Section 270 of the New York Penal Law to the field of foreign law, the court did not discriminate between the foreign lawyer, the non-foreign lawyer, the citizen or the alien.

All persons, regardless of citizenship or alienage, are prohibited from practicing foreign law if they are not duly licensed members of the New York bar. Thus the public protection, upon which the licensing provisions are based, is preserved, and no discrimination is practiced.

E. Appellant has not been excluded from the practice of foreign law because he does not know New York law.

Appellant erroneously contends that it is necessary to know New York law to be admitted to the New York bar; therefore the requirement is unconstitutional because it bears no reasonable relation to the practice of foreign law (Jurisdictional Statement, pp. 18-26).

If it were necessary to establish such relationship in order to sustain the decision of the New York Court of Appeals, the opinion of the Court below amply demonstrates it.

The Court points out that the lay public is just as liable to injury when an unlicensed person gives advice as to legal rights either under foreign or domestic law (3 N. Y. (2) 224, 231, 233).

Applying the principle expressed in *New York County Lawyers Assn.* vs. *Bercu* (78 N. Y. Supp. (2) 209, 219, 220, 273 App. Div. 524, affd 299 N. Y. 728) that in response to a request for legal advice, that, "essential to the solution of any problem is recognizing all the elements of the problem",

the Court below illustrates the need to relate New York law with advice as to foreign law when it said:

> "To allow a Mexican lawyer to arrange the institution of divorce proceedings for a New York resident in a Mexican court, without allowing him to tell the client that the divorce might be invalid (Querze *v.* Querze, 290 N. Y. 13), or that it might adversely affect estate or other property rights or status in this State (Matter of Rothscheck, 300 N. Y. 346), is to give utterly inadequate protection to him (See 70 Harvard L. Rev. 1112-1113" (2 N. Y. (2) 224, 231).

Appellant, giving advice as to foreign law, is faced with a dilemma which he cannot resolve in favor of his client. If he knows no domestic law, he is unable to relate his advice to domestic law, and thus is unable to consider all the elements of the problem presented to him for advice. If he knows domestic law he, nevertheless, may not advise on all the elements of the problem because that would include giving advice on domestic law, which on his own view would constitute the illegal practice of law. He therefore gives no advice on domestic law and thereby fails, as the Court of Appeals states, to give adequate protection to the public.

The Court of Appeals rejected the argument that there may be areas of foreign law which do not relate to domestic law, or to the status of a member of the public in New York, and therefore there is no reasonable relation between knowledge of domestic law and advice on foreign law. One cannot determine that advice on foreign law has no effect upon the status of New York residents, or upon his rights and obligations under domestic law unless one knows and interprets the domestic law. It follows therefore that when one gives advice on foreign law upon the basis or understanding that such advice does not affect any rights or status under domestic law, advice on domestic law is also

being furnished. Negating the influence of domestic law is just as much advice on domestic law as applying affirmatively some aspect of domestic law.

The New York Court of Appeals recognized the problem when it added to its statement last quoted above:

> "Nor are we in anywise persuaded * * * that there is any difference between the right of a Mexican lawyer to act and advise the public in divorce matters and the right of foreign lawyers generally to act and advise with respect to foreign law" (3 N. Y. (2) 224, 231, 232).

Nevertheless, the New York rule for admission to practice law does not necessarily require that a foreign lawyer have knowledge of New York law as a prerequisite for admission to the bar. The regular New York bar examination may be waived for a foreign lawyer who comes from a country whose jurisprudence is based upon the principles of the English Common Law (Rule VII—Rules of the Court of Appeals for admission of attorneys). The rule recognizes the need for a general degree of knowledge of the law that applies in New York which has inherited the English Common Law. On the other hand, New York does not recognize the legal competence of foreign lawyers who come from countries whose jurisprudence is not based on the English Common Law. In the interest of the public protection these lawyers are required to take the regular bar examinations. A Mexican lawyer would not be exempt from passing the bar examination.

It should be noted too, that even where a foreign lawyer may be admitted without a bar examination, he is required to establish proof of moral character and must be a citizen of the United States (Rule VIII of the Rules of the Court of Appeals for Admission of Attorneys). The fact that he is

a foreign lawyer is not accepted, *ipso facto*, as proof of good character. It is apparent that more than knowledge, legal and general, is required in the interest of protecting the public.

Thus proof of good character, educational requirements, supervision and control of the courts over attorneys who are officers of the Court, and the Court's power to exercise summary jurisdiction of lawyers and their dealings with their clients, and to discipline them when necessary, are all part of the mantle of public protection evolved by the State for the benefit of its public.

These standards are fair and reasonable and compliance therewith is not an unreasonable requirement for the protection of the public when the practice of foreign law is involved.

However, as we have already noted, the appellant cannot complain of the New York requirements, for he has made no application for admission to the bar.

This Court is not confronted with any improper discrimination in the application of Section 270 of the New York Penal Law between aliens and citizens, nor with any improper application of the rules and regulations of New York for admission to the bar.

The police power of the State of New York is properly and fairly exercised in the public protection. The practice of law is properly and fairly regulated in the public interest.

The issues raised by appellant show no violation of the Fourteenth Amendment and no federal question of substance and the appeal should be dismissed.

POINT II.

The decision of the New York Court of Appeals rests on an adequate non-Federal basis and should not be reviewed.

It seems perfectly obvious that the whole tenor of the decision is based upon the public policy of the State of New York to provide a qualified and regulated bar. The opinion clearly points out the danger and damage to the public which may result from allowing unqualified and unregulated persons to practice foreign law in New York.

Having clearly stated that the practice of foreign law is the practice of law in New York (3 N. Y. (2) 224, 228, 229) citing *People v. Alfani* (227 N. Y. 334, 337, 339), *Matter of New York County Lawyers Assn. v. Bercu* (273 App. Div. 524, affd. 299 N. Y. 728), *Matter of Pace* (170 App. Div. 818), *Matter of New York County Lawyers Assn.*, Anonymous (207 Misc. 698), the Court of Appeals holds that such practice of foreign law comes within the meaning and intent of Section 270 of the New York Penal Law, and affirms the orders below which find that appellant violated the Section.

The Court points out the need to require practitioners of foreign law to be admitted to the New York bar for the protection of the public (3 N. Y. (2) 224, 231). It illustrates how the State protects the public in cases involving foreign law, and the liability of, and control over New York attorneys who act in matters of foreign law. It shows that foreign attorneys, or any other laymen, who seek to make a business of practicing foreign law are not subject to the same control exercised over duly admitted lawyers, thereby indicating clearly the lack of public protection when laymen practice foreign law.

It appears from the opinion that the public policy of the State, in its effort to protect the public, would be set at naught if laymen could practice foreign law, without violating Section 270 of the Penal Law.

The construction of said section of the Penal Law of New York is consistent with, and carries out the public policy of the State to protect the public from unqualified and unregulated practitioners of any branch of the law. It holds that the public is entitled to the same protection whether it seeks legal advice on foreign or domestic law. That protection is enacted in the requirements for admission to the bar. They involve proof of compliance with prescribed educational standards, general and specific, good character, citizenship, residence, oath to support the Constitutions of the United States and the State and belief in our form of government (New York Judiciary Law, Secs. 53, 90, 460, 466; Rules of the Court of Appeals of New York for Admission of Attorneys; Rules I to IX; Rule 1 of the New York Rules of Civil Practice).

It is settled law in New York that it is a crime, under Section 270 of the New York Penal Law, to practice law, in *any manner*, without having been duly admitted to the New York bar and taken the Constitutional Oath.

People v. *Alfani*, 227 N. Y. 334;
New York County Lawyers Assn. v. *Bercu*, 273 App. Div. 524, aff'd 299 N. Y. 728.

The theory of public protection, predicated upon compliance with the standards prescribed by the State for a license to practice law, and the control of the Courts over the lawyer, is completely nullified, if any layman could set himself up as a practitioner of foreign law.

Under New York law, a person disbarred in another state will not be licensed to practice law (*Matter of Peters*,

221 App. Div. 607, aff'd 250 N. Y. 595). A person who would resort to force and violence to overthrow the existing form of government, will not be licensed to practice law (*Matter of Cassidy,* 268 App. Div. 282, aff'd 296 N. Y. 926).

On the theory advanced by appellant, New York would be helpless to prevent a disbarred lawyer whether of New York or any other state or country, from setting himself up in the business of giving legal advice and rendering legal services in respect of foreign law. This could not have been the intention of the legislature of New York and it is so held by the opinion of the New York Court of Appeals.

It has been demonstrated under Point I that the state has the sole right to authorize licensing of the practice of law.

The determination of the Court of Appeals of New York rests on adequate state grounds and on a non-federal basis. It should not be reviewed.

Williams v. *Kaiser,* 323 U. S. 471, 477; *Holly* v. *Lawrence,* 317 U. S. 518.

The decision involves the construction of local law, and not a federal question.

Black v. *Cutter Laboratories,* 351 U. S. 292, 299.

The appeal should be dismissed.

POINT III.

This appeal was improperly taken under Title 28, U. S. C. Sec. 1257 (2), and should be dismissed.

Appellant has pursued the wrong procedure by taking an appeal under Title 28, U. S. C. Sec. 1257 (2).

Appellant did not claim, in the courts of New York, that Sec. 270 of the Penal Law of New York, as it stands, violated the Constitution of the United States. His claim was that if the Court construed said Section to include the practice of foreign law, and applied such construction to him, he would be deprived of liberty and property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

His claim then, is really based upon the assertion of a right, privilege or immunity under federal law, in which case the decision against him can be reviewed only by certiorari, under Title 28, U. S. C. Sec. 1257 (3).

Charleston Federal Savings & Loan Assn. v. *Alderson*, 324 U. S. 182, 185;

Jett Bros. Distilling Co. v. *Carrollton*, 252 U. S. 1;

Mergenthaler Linotype Co. v. *Davis*, 251 U. S. 256, 259.

This Court said, in *Mergenthaler Linotype Co.* v. *Davis*, 251 U. S. 256, 259, on motion to dismiss a writ of error for which appeal has now been substituted:

> "The claim that the lease contract was made in the course of interstate commerce and therefore not subject to state statutes, was insufficient to challenge the validity of the latter; at most it but asserted a 'title, right, privilege or immunity' under the Fed-

eral Constitution which might afford basis for certiorari but constitutes no ground for writ of error from this court."

The appeal was improperly taken and should be dismissed.

If the Court should consider appellant's appeal as if it were an application for a writ of certiorari, it should be denied upon the same grounds urged for dismissal of the appeal.

Conclusion.

The appeal should be dismissed.

Respectfully submitted,

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